

**§ 242.50 Funds and finances: off-site utilities and streets.**

The Commissioner shall require assurance of completion of off-site public utilities and streets in all cases, except where a municipality or other public body has by agreement acceptable to HUD agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee, or both. In any case, the amount of deposit or retained cash (or both) must be sufficient to cover the cost of off-site utilities and streets. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by HUD, rather than disburse at the initial closing of the mortgage, a sufficient portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, HUD may also require a surety company bond or bonds.

**§ 242.51 Funds and finances: Insured advances and assurance of completion.**

(a) Where the estimated cost of construction or substantial rehabilitation is more than \$500,000, the mortgagor shall furnish assurance of completion in the form of corporate surety bonds for payment and performance, each in the minimum amount of 100 percent of the construction contract (or Guaranteed Maximum Price, in the case of construction management) and each satisfactory to HUD.

(b) All types of assurance of completion shall be on forms approved by HUD. All surety companies executing a bond and all parties executing a personal indemnity agreement must be satisfactory to HUD.

(c) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements provided for in this section.

**§ 242.52 Construction contracts.**

(a) *Awarding of contract.* A contract for the construction or rehabilitation

of a hospital shall be entered into by a mortgagor, with a builder selected by a competitive bidding procedure acceptable to HUD.

(b) *Form of contract.* The construction contract shall be: A lump sum form providing for payment of a specified amount; a construction management contract with a guaranteed maximum price, the final costs of which are subject to a certification acceptable to HUD; a design-build contract with terms and certification requirements acceptable to HUD; or such other form of contract as may be acceptable to HUD.

(c) *Competitive bidding.* A competitive bidding procedure acceptable to HUD must be used in the selection of bidders to perform work or otherwise provide service to the project, the costs of which are included in any form of construction contract cited in paragraph (b) of this section. Fixed equipment not included in the construction contract, and movable equipment, may be purchased by securing quotations or by using competitive bidding procedures.

**§ 242.53 Excluded contractors.**

(a) Contracts relating to the construction of the project shall not be made with any person or entity that has been excluded from participation in federal programs, including but not limited to: A general contractor, a subcontractor, or construction manager (or any firm, corporation, partnership, or association in which such contractor, subcontractor, or construction manager has a substantial interest). Before entering into contracts with any such person or entity, owners must consult the government-wide list of excluded parties, and any list of excluded parties maintained by HUD.

(b) Contracts relating to the construction of the project shall not be made with a general contractor that has an identity of interest, as defined by HUD, with the mortgagor or mortgagee.

(c) If HUD determines that a contract has been made contrary to the requirements of paragraphs (a) or (b) of this section and so notifies the mortgagee, HUD will require the contractor or construction manager to cost-certify and may require other remedial action

## **§ 242.54**

in addition to taking enforcement action, as HUD deems appropriate.

### **Subpart F—Nondiscrimination and Wage Rates**

#### **§ 242.54 Nondiscrimination.**

Hospital facilities financed with mortgages insured under this part must be made available without discrimination as to race, color, religion, sex, age, disability, or national origin. Hospitals must be operated in compliance with all applicable civil rights laws and regulations, including 24 CFR part 200, subpart J (Equal Employment Opportunity), and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*). Racially restrictive covenants are per se illegal and their use is prohibited. The aforesaid provisions regarding age and sex discrimination do not affect the eligibility of hospitals for women and children.

#### **§ 242.55 Labor standards.**

(a) Projects financed under this part (except under 24 CFR 242.91) must comply with the prevailing wage rates determined under the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*), and U.S. Department of Labor regulations in 29 CFR parts 1, 3, and 5 for compliance with labor standards laws, in accordance with section 212 of the Act, provided that supplemental loans under section 241 of the Act made in connection with loans insured under this part are subject to labor standards requirements in the same manner and to the same extent as mortgages insured under section 242 of the National Housing Act.

(b) The requirements stated in 24 CFR part 70 governing HUD waiver of Davis-Bacon prevailing wage rates for volunteers apply to hospitals with mortgages insured under this part.

(c) Each laborer or mechanic employed on any facility covered by a mortgage insured under this part (except under 24 CFR 242.91, but including a supplemental loan under section 241 of the National Housing Act made in connection with a loan insured under this part) shall receive compensation at a rate not less than 1.5 times the basic rate of pay for all hours worked in any workweek in excess of 8 hours in

## **24 CFR Ch. II (4–1–08 Edition)**

any workday or 40 hours in the workweek.

(d) Project commitments, contracts, and agreements, as determined by HUD, and construction contracts and subcontracts, shall include terms, conditions, and standards for compliance with applicable requirements set forth in 29 CFR parts 1, 3, and 5 and section 212 of the Act.

(e) No advance under a loan or mortgage that is subject to the requirements of section 212 shall be eligible for insurance unless there is filed with the application for the advance a certificate as required by HUD certifying that the laborers and mechanics employed in construction of the project have been paid not less than the wage rates required under section 212.

### **Subpart G—Regulatory Agreement, Accounting and Reporting, and Financial Requirements**

#### **§ 242.56 Form of regulation.**

As long as HUD is the insurer or holder of the mortgage, all mortgagors shall be regulated by HUD through the use of a regulatory agreement in a published format determined by HUD and such additional covenants and restrictions as may be determined necessary by HUD on a case-by-case basis. In addition, all mortgagors shall be subject to the provisions of 24 CFR part 24 and such other enforcement provisions as may be applicable. The mortgagor shall be subject to monitoring by HUD and its agents and contractors, on an ongoing basis for the life of the insured mortgage to ensure against the risk of default, and the mortgagor must make its financial records available to HUD and its agents and contractors upon request.

#### **§ 242.57 Maintenance of hospital facility.**

The mortgagor shall maintain the hospital's grounds, buildings, and the equipment financed with mortgage proceeds in good repair, and shall promptly complete such repairs and maintenance as HUD considers necessary.